

City of Fayetteville Staff Review Form

2019-0105

Legistar File ID

3/5/2019

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Greg Weeks

2/14/2019

WASTEWATER TREATMENT (730)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends approval of the purchase and installation of a replacement bi-fuel system for the Paul R. Noland Facility's back-up generator by Riggs Power Systems in the amount of \$87,495.00 plus estimated applicable taxes of \$8,530.77 for a total of \$96,025.77.

Budget Impact:

5400.730.5800-5414.00

Water and Sewer

Account Number

Fund

02069.1

Plant Pumps and Equipment - WWTP

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 785,080.00

Funds Obligated \$ 106,609.62

Current Balance \$ 678,470.38

Does item have a cost? Yes

Item Cost \$ 96,025.77

Budget Adjustment Attached? No

Budget Adjustment \$ -

Remaining Budget \$ 582,444.61

V20180321

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF MARCH 5, 2019

TO: Mayor and City Council

THRU: Water & Sewer Committee
Tim Nyander, Utilities Director

FROM: Greg Weeks, Wastewater Treatment

DATE: February 14, 2019

SUBJECT: **Approval of a Bid Waiver with Riggs (CAT) Power Systems for purchase and installation of one (1) GTI Bi-Fuel® System replacement at the Paul R. Noland WWTP.**

RECOMMENDATION:

Staff recommends purchase of a replacement bi-fuel system for the Paul R Noland Facility's Caterpillar brand back-up power Genset provided and installed by Riggs (CAT) Power Systems in the amount of \$87,495.00 plus applicable taxes.

BACKGROUND:

The Noland Treatment Facility utilizes a 2,000-kilowatt Caterpillar brand Genset system for emergency power and load-shedding management during the summer season. Recent inspections found the Genset's bi-fuel system in need of major repairs. The unit's bi-fuel system allows the Genset to generate electrical power via a combination of natural gas and diesel fuels. A complete bi-fuel system replacement is needed as the Genset is nearly 15-yr old and the current bi-fuel components are obsolete and replacement parts are not available. A GTI Bi-Fuel® System, by Altronic, LLC, is an available retro-fit bi-fuel control system specifically tailored for compatibility with CATERPILLAR Genset systems. Installation of the bi-fuel retrofit kit will regain operation of the Genset's bi-fuel capability while avoiding purchase of an entirely new Genset unit. Additionally, the bi-fuel retrofit will include updated fuel-monitoring technology to maximize the ratio of natural gas-to-diesel fuel consumption. Bi-fuel operation of the facility's Genset reduces greenhouse emissions from decreased diesel fuel combustion and shortens ROI as natural gas is comparatively less expensive than diesel. Based on historic Genset operation, Riggs Power Systems has projected the upgraded bi-fuel system (especially for load-shedding management) will avoid an estimated \$55,000 of diesel fuel consumption per year.

DISCUSSION:

Staff recommends a Bid Waiver with Riggs Power Systems as they are the region's certified Caterpillar dealer and service representatives and they have exclusive experience servicing the Noland Facility's Genset system. Riggs Power Systems recently submitted a quote of \$87,495.00 for purchase and installation of a GTI Bi-Fuel® System.

The Altronic GTI-Bi fuel system will come with its own warranty for the parts system and that warranty will be provided by Altronic LLC. As this is not a caterpillar manufactured system, Caterpillar Warranty will not apply. A copy of the warranty statement for this bi fuel system is attached as well as Riggs Cat's workmanship statement that would directly apply to their installation of this system. Also attached is a warranty and workmanship statement for Sulzer Turbo Services New Orleans, as they will be assisting in the installation and testing of this system. All parties involved, Sulzer Turbo Services, Riggs Cat, and Altronic LLC, will stand behind this project in its entirety.

BUDGET/STAFF IMPACT:

Funds are available within the Wastewater Treatment - Plant Pumps and Equipment project.

Attachments:

Quote from Riggs Power Systems

GTI Product Warranty

Riggs Workmanship Warranty

Sulzer Turbo Services – Warranty and Workmanship Statement

RiggsCAT

Mailing Address:
P.O. Box 1399
Little Rock, AR 72203-1399

Riggs Power Systems

Date: February 14, 2019 **Quote Number:** Bifuel11519
To: Jacobs / John Turley
From: Zachary Ray **Phone:** 501-813-0550
Reference: Noland WWTP 3516 Caterpillar – Altronic GTI + Bi-Fuel System Replacement

Riggs Power Systems is pleased to provide this offer. Acceptance of this offer is solely conditioned on the terms of this offer. This offer is valid for 30 days. Our proposed Scope of Supply includes:

- 1) Purchase of and installation of an Altronic bi-fuel system, which includes an enhanced gas train assembly, gas mixers, enhanced panel with DE display, gas control valve, 3500A current transformer, 480V watt transducer, and all associated hoses, swivels, plates, adapters, brackets, valves, end caps, and accessory kits required for full system installation.
- 2) Two factory technicians to install the Altronic bi-fuel system
- 3) An XQ2000 standby rental generator with all associated cables while 3516 is offline.
- 4) Post installation start up/commissioning with full load banking service to verify operation under variable loads.

- Estimated Project Duration: 5 Days
- Estimated Lead Time on Bi-Fuel System: 4-6 Weeks

Project Pricing

\$87,495.00

Sales Tax Not Included

Little Rock

9125 I-30
(501) 570-3100
(800) 876-1021

Jonesboro

3701 E. Parker Rd.
(870) 932-5473
(800) 467-4055

Ft. Smith

6601 S. Zero
(501) 649-9582
(800) 467-4006

Springdale

4117 Wagon Wheel
(479) 756-8080
(866) 839-8080

El Dorado

2100 W. Hillsboro
(870) 881-0800
(877) 912-0800

Texarkana

2400 Trinity Blvd
(870) 773-5621
(800) 467-4008

Russellville

2911 S. Arkansas
(479) 968-3304
(800) 327-3304

Harrison

3440 Hwy. 65 S.
(870) 743-2000
(866) 743-2536

Thank you for the opportunity to serve you, and I look forward to earning your business. If there are any questions, or if additional information is required regarding this offer, please do not hesitate to call.

Sincerely,

Zachary Ray
Riggs Power Systems
Territory Manager
Sales, Service, & Rental
501-813-0550
RayZ@jariggs.com

PRODUCT WARRANTY – GTI BI-FUEL APRIL 2014

Compression Technology

Altronic, LLC

The Altronic GTI Bi-Fuel products are warranted against failure in normal usage due to defects in workmanship and materials when installed in accordance with the applicable instructions and good practice. Warranty periods are defined as follows:

ITEM:	WARRANTY TIME PERIOD:
1. Major system components: (mixers, regulators, controllers, etc.)	2 years from date of sale to first end user or 30 months from date of shipment from Altronic, whichever occurs first
2. Transducers, thermocouples, vibration or other Sensors	1 year from the date of sale to the first end user or 18 months from the date of shipment from Altronic, whichever occurs
3. Engine damage related to failure of Bi-Fuel System on new engines (see below)	12 months or 1,000 operating hours, whichever occurs first

712 Trumbull Avenue
Girard, Ohio USA
Phone (330) 545-9768
FAX (330) 545-3231
sales.altronic.girard@hoerbiger.com
www.altronic-llc.com

Altronic shall, at its sole option, repair, replace, or credit for the purchase price, any product which, after examination by Altronic, is deemed defective. All warranty parts must be shipped prepaid to the Altronic facility accompanied by a completed warranty claim form.

This warranty shall be deemed void in the event that the Bi-Fuel system or any component has been altered or modified without written permission of Altronic. Altronic specifically makes no warranty with respect to accidental or deliberate damages resulting from product use, nor does it warranty damages caused by improper installation, operation, and/or misuse or abuse of the product.

ENGINE WARRANTY:

For a period of 12 months or 1,000 operating hours (whichever occurs first) following installation of the Bi-Fuel System on a new, previously unused diesel engine which is properly maintained under a maintenance contract, Altronic will further warrant to the original purchaser that should a failure of the Bi-Fuel System result in damage to the converted engine, Altronic shall cover direct repair costs. Detonation damage shall be covered only if the GTI vibration protection package is in use. Customer shall provide a written report to Altronic detailing the cause of engine damage within 48 hours of the occurrence. Altronic (or its designated technical representative) shall be granted access to the damaged engine or engine components prior to commencement of repairs, unless otherwise authorized by Altronic. Reimbursement shall be limited to the cost and direct labor of replacing said damaged parts. This provision shall not apply to damages caused by gas quality and/or composition, nor shall it apply to damages related to improper installation or operation of the Bi-Fuel System or the converted engine. This warranty does not apply in the case of non-methane based fuels, such as propane, hydrogen, syngas, etc.

This warranty does not apply to the cost of installation, cost of removal, consequential or concurrent damage. This warranty is expressly in lieu of all other warranties, expressed or implied, including warranties of merchantability and fitness for a particular purpose.

***New engine warranty is not valid until the Commissioning Sheet is returned stamped approved from Altronic.**

WARRANTY PROCEDURE:

1. All warranty claims must be submitted through a Master Distributor. Warranty claims must be accompanied by a completed and signed Altronic warranty form WF-AS. Incomplete warranty forms will delay processing of the claim and will cause forfeiture of the processing fee for that claim
2. Each warranty claim must be limited to one Altronic system or part.
3. **Do not mix warranty materials with other types of items (exchange materials, repairs, etc.) in the same shipping carton. Clearly mark the outside of the carton with the word "WARRANTY" or the letters "WC"**
4. Materials being submitted for warranty consideration must be properly packaged to prevent damage in transit and sent PREPAID to:

**Altronic, LLC
712 Trumbull Avenue
Girard, Ohio 44420 USA
Attention: WARRANTY/REPAIR DEPARTMENT**

5. At the user's discretion, the original selling party can provide a PO for replacement parts that, if available, will be shipped and invoiced (standard payment terms apply) prior to receiving the parts at Altronic for warranty consideration. At the sole discretion of Altronic, if the returned parts meet the conditions of the Warranty, and are non-repairable or deemed to be un-repairable, Altronic will cancel the invoice generated against the PO.
6. If the returned parts are deemed by Altronic to be outside of the Warranty conditions, the customer will be notified and asked to approve the cost of repair (if repairable) or final disposition of the part(s). Failure to respond with such instructions for a period of 30 days will result in the parts being returned to the shipping source in their current condition.
7. Parts covered by the Warranty will be returned by Altronic prepaid to the shipping source with the same level of expedition with which they were shipped to Altronic. Repairs or replacements outside of the Warranty coverage will be shipped COLLECT.

REPAIR PROCEDURE:

1. All repairs must be submitted through a Master Distributor. Altronic system or part must be accompanied by a Repair PO. Failure to provide a PO will delay processing.
2. Repair PO's are best handled with individual PO numbers for each item, so that a group of items is not held until all of the items in the group are repaired. A partial return shipment of multiple items on a single PO can be confusing and difficult to track.
3. A minor repair fee will be charged for test and evaluation. If the cost exceeds the price of a minor repair the Master Distributor will be notified and asked to approve the cost of repair (if repairable) or final disposition of the part(s). Failure to respond within 30 days will result in the parts being returned to the shipping source in their current condition at your cost. This procedure helps to eliminate unnecessary emails.
4. All Altronic manufactured items deemed non-repairable and out of the warranty period can be exchanged for 80% of the price of new part.
5. **Do not mix repair materials with other types of items (exchange materials, warranty, etc.) in the same shipping carton. Clearly mark the outside of the carton with the word "REPAIR"**
6. Materials being submitted for repair must be properly packaged to prevent further damage in transit and sent PREPAID to:

Altronic, LLC
712 Trumbull Avenue
Girard, Ohio 44420 USA
Attention: WARRANTY/REPAIR DEPARTMENT

RETURN PROCEDURE:

1. All returns must be submitted through a Master Distributor. Altronic system or part must be accompanied by an R.A.
2. Each R.A. must be limited to one Altronic system or part.
3. **Do not mix returns with other types of items (repairs, warranty, etc.) in the same shipping carton. Clearly mark the outside of the carton "R.A. and the number"**
4. Materials being returned must be properly packaged to prevent damage in transit and sent PREPAID to:

Altronic, LLC
712 Trumbull Avenue
Girard, Ohio 44420 USA
Attention: WARRANTY/REPAIR DEPARTMENT

J. A. RIGGS TRACTOR COMPANY

WORKMANSHIP WARRANTY

J. A. RIGGS TRACTOR COMPANY WARRANTS all service work performed by its service personnel to be free of workmanship defects for a period of 90 days unlimited mileage. J. A. Riggs Tractor Company will repair or replace, at its option, any damaged part involved in the warranty repair. Such parts and installation labor will be provided without charge to the (OWNER/OPERATOR) at J. A. Riggs Tractor Company or other service establishment previously authorized by J. A. Riggs Tractor Company, at J. A. Riggs Tractor Company's option. Such repair is to be provided during regular business hours.

THIS WARRANTY IS NOT APPLICABLE TO FAILURES OR DEFECTS RESULTING FROM:

- (a) The use of attachments not sold or approved by J. A. Riggs Tractor Company; or
- (b) Installation of components or other repair work not performed by J. A. Riggs Tractor Company which, in the judgment of J. A. Riggs Tractor, is deemed to be improper; or
- (c) Poor maintenance or abusive operation; or
- (d) An application which exceeds the specified limits in the Caterpillar selection guide.

All repairs made by J. A. Riggs Tractor Company pursuant to this warranty shall not extend the stated warranty period and the (OWNER/OPERATOR) shall be responsible for giving timely notice of warrantable failure and promptly making the machine available for repair.

In the event of breach of the above warranty, it is expressly understood that the (OWNER/OPERATOR'S) sole and exclusive remedy shall be the repair or replacement of any damaged part as specifically provided in this warranty; however, should the parts prove so damaged as to preclude the remedying of warranted workmanship defects by repair or replacement, the (OWNER/OPERATOR'S) sole and exclusive remedy shall then be refund of the purchase price of the parts and labor furnished or provided by J. A. Riggs Tractor Company.

CONDITIONS AND LIMITATIONS

With the above warranties and limitations understood, J. A. Riggs Tractor Company shall in no event be liable for any other losses, damages, costs or expenses claimed by you including, but not limited to, loss from failure of the equipment to operate for any period of time, and all other direct, indirect, special, incidental, or consequential damages, including all personal injury and property damage due to alleged negligence, strict liability, or any other act of J. A. Riggs Tractor Company, its employees, or other service establishments. ~~THIS WARRANTY~~ WARRANTY SET FORTH ABOVE IS IN LIEU OF ALL OTHER WARRANTIES BY J. A. RIGGS TRACTOR COMPANY EXPRESSED OR IMPLIED BY LAW. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, J. A. RIGGS TRACTOR COMPANY MAKES NO WARRANTY OF MERCHANTABILITY OF FITNESS FOR ANY PARTICULAR PURPOSE.

**Sulzer Turbo Services New Orleans.
General Terms and Conditions for Repair, Modification,
Manufacture and/or Sales of Replacement Parts**

1. Applicability and Validity

Any repairs, modification, manufacture and/or sale of replacement parts and/or other customer support services (hereinafter referred to as "Work") rendered by Sulzer Turbo Services New Orleans Inc., (hereinafter referred to as "Contractor") on the Customer's equipment or any part thereof (hereinafter referred to as "Equipment") shall be made or supplied in accordance with the General Terms and Conditions set forth herein, which together with the quotations of Contractor, if any, shall constitute the complete agreement of the Contractor and Customer resulting from the acceptance of the quotations of the Contractor or of an order from the Customer and supersede any other agreement or representation, verbal or in writing with respect to the subject matter herein.

These General Terms and Conditions shall be valid in all respects and any purported additional or different terms contained in the Customer's order or response to quotation or any other document shall be deemed objected to by the Contractor without need of further notice and shall not be effective or binding unless agreed to in writing by Contractor. Customer's assent to the General Terms and Conditions set forth herein shall be conclusively presumed from Customer's failure to object thereto in writing as well as any direction from the Customer to Contractor to proceed with the order or Customer's acceptance of all or part of the products or services ordered. General or special terms and conditions stipulated by the Customer which are in contradiction with these terms and conditions shall be valid only if and to the extent they have been accepted by the Contractor in writing.

Contractor shall have the right to subcontract any or all work covered by the contract. Any assignment of this contract or any rights hereunder by Customer without the prior written consent of the Contractor shall be void.

Should any provision herein prove to be invalid or not enforceable by a competent court, such invalidity or non-enforceability shall not affect the validity of the remaining terms and conditions. The Contractor and the Customer shall use their best efforts to agree on a provision that has commercially and legally the most similar effect as the invalid or non-enforceable provision.

2. Performance of Work

The Contractor shall perform the Work in accordance with the Terms and Conditions set forth herein, and in any other documents which refer to the Work and are signed by both the Contractor and the Customer (hereinafter together referred to as "Contract").

3. Price

Prices are stated in U.S. dollars and except as may be specifically provided on Contractor's Proposal or Confirmation of Order or as may be otherwise agreed upon in writing by Contractor and Customer. The price stated on Contractor's Proposal or Confirmation of Order is net without any deductions whatsoever. All additional costs, including (but not limited to) charges for freight, packing, carriage, insurance, customs duties, fees for export, transit, import and such other permits and certificates as may be necessary, any federal, state or local property, license, privilege, sales, use, excise, gross receipts or other like taxes which may now or hereafter be applicable, shall be borne by the Customer. If charges for packing, freight, carriage, insurance, customs duties or other additional costs are separately stated on Contractor's Proposal or Confirmation of Order and included in the price stated thereon, Contractor reserves the right to adjust its price should the costs on which such additional charges are based be modified. In addition, an appropriate price adjustment shall apply in case the work completion date and/or shipping date has been subsequently extended due to any reasons stated in Art. 5 hereinafter entitled "Work Completion/Shipping".

4. Customer's Obligations

The Customer shall take all necessary and reasonable measures to support Contractor in the execution of the Contract. At the request of Contractor, Customer will expeditiously provide Contractor all available information regarding the Equipment or part thereof, such as but not limited to operational data, log sheets, quality on lubricants, fuel, steam, cooling water etc. The Customer shall (1) immediately notify Contractor of any contamination that may exist in any part of its facility or on the Equipment where Work may or is being performed where such contamination may be due to any hazardous material, including but not limited to, asbestos containing parts, insulation or gaskets or nuclear radiation and (2) be obligated, at its own expense, to decontaminate its facility or parts of the Equipment to be repaired or replaced hereunder, which may be contaminated due to any hazardous material, so that such hazardous material shall be reduced or eliminated to a level in which the facility is safe to occupy and/or such parts may be handled and/or shipped in a safe manner and in accordance with all applicable laws and regulations and industry accepted standards without special licensing from any Government Regulatory Authority.

Notwithstanding anything contained in this Contract to the contrary, until said decontamination or radioactive environment has been reduced to a safe, legal and industry accepted standard for occupancy by Contractor's personnel without the need for special protective clothing, the Contractor shall be under no obligation to remove, disassemble, repair, reassemble or reinstall or provide any other service to such Equipment.

5. Work Completion/Shipping

The dates specified for Work completion and/or shipping on Contractor's Proposal or Confirmation of Order are "the best estimate" and are based upon prompt receipt of necessary parts, material, replacement part(s) and information. These dates shall be reasonably extended for a minimum time period equaling the length of delay if: (a) information required by Contractor from Customer to execute the order is not received in a timely manner or if changes are made which delay Work completion and/or shipping as agreed upon by Contractor and Customer; (b) Contractor is not able to complete or ship the Work by reason of hindrances which, despite due care, Contractor cannot avoid (inclusive of those occurring in the field service of its major suppliers or third parties), such as epidemics, act of civil or military authority, mobilization of armed services, war, riots, strikes, boycotts, picketing, lock-outs or other disturbances, serious breakdowns, accidents, labor conflicts, delayed or deficient delivery of manufactured products, the need to scrap important components due to defective casting, official or other measures of whatever kind, transport difficulties, natural catastrophes and acts of God; or (c) if Customer or a third party is behind schedule with work which it has to carry out,

or late in fulfilling its contractual obligations (including, but not limited to, failure by Customer to observe terms of payment).

Notwithstanding anything contained herein to the contrary, Contractor shall not be liable for any loss or damage to Customer resulting from any delay in delivery, whether due to non-conformance as mentioned above or otherwise.

**Sulzer Turbo Services New Orleans.
General Terms and Conditions for Repair, Modification,
Manufacture and/or Sales of Replacement Parts**

6. Termination**6.1 Contractor's Default**

In the event that the Contractor fails to comply with a material obligation in connection with the performance of the Work ("Contractor's Default"), the Customer shall give the Contractor written notice of Contractor's Default, specifying its nature and stating that the Customer intends to terminate the Contract. If the Contractor fails to remedy the Contractor's Default or fails to offer a reasonable plan to cure the Contractor's Default within a reasonable time after the receipt of said notification, but not less than thirty (30) days after Customer's written notification, the Customer may terminate the Contract.

6.2 Customer's Default

In the event the Customer fails to comply with a material obligation in connection with the Contract, including but not limited to Customer's failure to comply with Article 4 above, or if the Customer fails to fulfill its payment obligations in accordance with Art. 12 below (hereinafter collectively referred to as "Customer's Default"), the Contractor shall give the Customer written notice of Customer's Default, specifying its nature and stating that the Contractor intends to interrupt the Work or to terminate the Contract. If the Customer fails to remedy the Customer's Default within a reasonable time after the receipt of said notification, including the failure of the payment of the Contractor's invoice not later than five (5) days after Contractor's reminder, the Contractor may interrupt the Work or forthwith terminate the Contract.

6.3 Payments

6.3.1 In the event the Contract is terminated by the Contractor due to Customer's Default, the Customer shall pay to the Contractor

- a) the agreed prices for the portion of the Work completed;
- b) the costs and expenses incurred by the Contractor directly connected with the Work in addition to that in a) above under the Contract prior to the date of termination the costs and expenses incurred by the Contractor directly connected with the Work in addition to that in a) above under the Contract prior to the date of termination; and
- c) Contractor's customary profit; and such other cost and expenses, including any cancellation charges under subcontracts, as the Contractor may incur in connection with such termination.

6.3.2 In the event the Contract is terminated by the Customer due to Contractor's Default, the Contractor shall be entitled to payments under (a) and (b) above only

7. Title and Risk of Loss or Damage

The title and right of possession to Equipment repaired or to be repaired remains with the Customer, subject to applicable lien rights of Contractor. Customer agrees that Contractor shall retain a security interest in the goods sold or repaired hereunder to secure any portion of the price not paid when due, and will, on request, execute a security agreement in such form as is required by Contractor which may be filed with appropriate local and state authorities.

Risk of loss of or damage to the replacement part(s) and/or repaired Equipment shall pass from Contractor to Customer upon delivery of such replacement part(s) and/or repaired Equipment EXW (ex works) as per INCOTERMS 2000 at Contractor's facility, regardless of whether title has passed to or already rests in Customer, transport is arranged or supervised by Contractor, or erection or start-up is carried out under the direction or supervision of Contractor.

If delivery of the replacement part(s) and/or repaired Equipment is delayed at the request of Customer or due to other reasons beyond Contractor's control, the risk of loss on said replacement part(s) and/or repaired Equipment shall pass to Customer at time of the original anticipated date of delivery of the replacement part(s) and/or repaired Equipment at EXW (ex works) as per INCOTERMS 2000 at Contractor's facility. From this time forward the replacement part(s) and/or repaired Equipment shall be stored and insured for the account of and at the risk of Customer.

All scrap, if any resulting from the manufacture of products shall remain the property of Contractor.

The title and right of possession to Equipment repaired or to be repaired remains with the Customer, subject to applicable lien rights of

8. Warranty

8.1 The Contractor warrants that the Work will be performed in a workmanlike manner and will be as described in the Contract. Should any failure to conform with this warranty appear within ninety (90) days after completion of the Work or the shipping date, whichever occur first, the Contractor shall, in complete fulfillment of all its liabilities under this warranty, if within the warranty period, given prompt written notice by the Customer, correct at its expense and at its option by reworking, repair or replacement any non-conformity which shall appear under proper storage, installation, maintenance and use of the replacement parts and/or services performed. No Work furnished by Contractor shall be deemed to be defective by reason of normal wear and tear, failure to resist erosive or corrosive action of any fluid or gas, Customer's failure to properly store, install, operate or maintain the Work in accordance with good industry practices or specific recommendations of Contractor, or Customer's failure to provide complete and accurate information to Contractor concerning the operational application of the Work. The Customer shall make the replacement part(s) available for correction. The warranty contained in this Article will terminate immediately, if the Customer or a

third party undertakes inappropriate or improper modifications or repairs or if the Customer, in case of a defect, does not immediately take all appropriate steps to mitigate damages and notify the Contractor in writing of its obligations to remedy such defect. Correction of non-conformities in the manner and for the period of time provided above shall constitute fulfillment of all liabilities of the Contractor to the Customer with respect to such Equipment. Contractor shall not be liable for costs of removal, reinstallation, or gaining access. The re-performance, repair or replacement of the Work or spare or replacement parts by Contractor under the provisions of the Warranty section of this agreement shall constitute Contractor's sole obligation and Customer's sole and exclusive remedy for all claims of defects regarding the Work.

8.2 No warranties other than expressly stated herein shall be granted hereunder.

8.3 Contractor shall not be liable for any loss or damage arising from any failure by it to discover or repair latent or inherent defects in the design of the Equipment.

ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY ARE HEREBY DISCLAIMED. CONTRACTOR MAKES NO OTHER WARRANTY OR REPRESENTATION OF ANY KIND WITH RESPECT TO THE EQUIPMENT OR SERVICES OTHER THAN AS SPECIFIED IN THIS SECTION 8.

**Sulzer Turbo Services New Orleans.
General Terms and Conditions for Repair, Modification,
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9. Inspection and Testing

If inspection and testing are made by Customer to demonstrate the ability of the replacement part(s) and/or repaired Equipment to operate under the Contract conditions and to fulfill the warranties herein set forth, Customer is to make all preparations and incur all expenses incidental to said inspection and testing. Contractor will have the right of representation at said inspection and testing but will make no charge for the expense of such representation unless otherwise mentioned in Contractor's Proposal or Confirmation of Order or as may be otherwise agreed upon in writing by Contractor and Customer. Customer's failure to make such inspection and testing shall be deemed to be a waiver of Customer's right of inspection and testing.

10. Limitation of Liability

10.1 Notwithstanding anything to the contrary in this contract, including all the documents making part thereof and to the maximum extent permitted by the law, in no event shall Contractor be liable to the Customer for any indirect, punitive, special, incidental or consequential damages in connection with this contract, including but not limited to, loss of profits or interruption of production, loss of opportunity or business, or claims by the Customer's client for such damages, whether such liability is based on contract, tort (including negligence), statute or any other basis of legal liability. The remedies of Customer set forth herein are exclusive, and Contractor's liability with respect to any contract or sale or anything done in connection therewith, whether such liability is based on any contract, indemnity, tort (including negligence), warranty, strict liability or otherwise, shall not exceed the Contract amount of the Work upon which such liability is based. All such liability shall terminate upon the expiration of the warranty period, if not sooner terminated.

10.2 The remedies of the Customer set forth in the Contract are exclusive and in lieu of any other right or remedy.

11. Terms of Payments

11.1 The invoices shall be deemed correct unless the Customer notifies the Contractor otherwise in writing not later than twenty (20) days after the date of the invoice. Except as otherwise provided by Contractor's Proposal or Confirmation of Order, payments shall be made by the Customer net cash without deduction upon receipt of the invoice to such bank accounts and in such currency as stated in the invoice. All installment deliveries shall be separately invoiced and paid for without regard to subsequent deliveries.

11.2 The Contractor is entitled to charge interest at a rate of 1% per month on amounts not paid within thirty (30) days from the date of the invoice.

11.3 The Contractor shall be entitled to immediately stop or suspend the performance of its Work in the event the Customer fails to make any payment due.

12. Changes in Product design/ Proprietary Information

Contractor reserves the right to change, discontinue or modify the design and/or construction of any of its products and to substitute material equal to or superior to that originally specified.

All information, including plans, designs, drawings, specification and data, furnished or prepared by Contractor specifically in connection with its performance hereunder, shall be deemed provided to the Customer on a confidential basis and shall remain Contractor's exclusive property. Such materials have been developed at Contractor's expense and contain Contractor's trade secrets. Customer shall not copy or reproduce such information for any purpose other than operation and maintenance except as may be approved by Contractor in writing. Customer also shall not, either directly or indirectly, communicate to a third party or use such information or any data derived therefrom for any purpose other than as set forth herein without the prior written consent of Contractor. Any and all such information submitted in connection with a Proposal which does not result in an order shall be returned to Contractor upon request.

13. Tooling

Charges for dies, tools and/or gauges do not convey ownership or the right to remove from Contractor's premises. Tool charges if shown on the invoice constitute only a part of the actual tool cost. Contractor assumes the remainder of the original costs and the cost of maintenance. Customer, however, may purchase such dies and/or gauges upon request, at the discretion of the Contractor.

14. Patents

Contractor warrants that the replacement part(s) and any component part thereof, in the particular form sold by Contractor, shall be delivered free of any rightful claim of any third party for infringement of any patent. If notified promptly in writing, and given authority, information and assistance, Contractor shall defend or may settle, at its expense, any suit or proceeding against Customer so far as based on a claimed infringement which would result in a breach of this warranty, and Contractor shall pay all damages and costs awarded therein against Customer due to such breach. The foregoing states Contractor's entire liability for patent infringement.

The preceding paragraph shall not apply to any replacement part(s) and any component part thereof manufactured to Customer's design, or to the use of any replacement part(s) and any component part thereof sold hereunder in conjunction with any other product in a combination not furnished by Contractor as part of this transaction. As to any such replacement part(s), component part or use in such combination, Contractor assumes no liability whatsoever for patent infringement and Customer shall indemnify and hold Contractor harmless against any infringement claims arising therefrom.

15. Place of Jurisdiction and Applicable Law

This Contract shall be governed by the laws of the State of Texas. Any disputes arising out of this Contract shall be resolved by informal mediation in any manner that the parties may agree within forty-five (45) days of written request for mediation by one party to the other. Any dispute that cannot be resolved through mediation shall be resolved by binding arbitration conducted in English in the State of Texas under the Commercial Rules of the American Arbitration Association. The arbitration shall be conducted by three arbitrators chosen in accordance with said Rules. The arbitrators are not entitled to award damages in excess of compensatory damages. Judgment upon the award may be entered in any court having jurisdiction.